

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

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CC:PSI:B01

PLR-126294-14

Date:

December 08, 2014

LEGEND

X =

Y =

a =

b =

Trust1 =

Trust2 =

Trust3 =

Date 1 =

Date 2 =

Date 3=

Date 4=

Date 5=

State =

Dear :

This responds to a letter dated July 3, 2014, and supplemental information, submitted on behalf of X by X's authorized representative, requesting inadvertent termination relief under section 1362(f) of the Internal Revenue Code (Code). In addition, X also seeks relief to allow Trust2 and Trust3 to file late elections to be treated as an electing small business trust (ESBT) pursuant to section 1361(e) of the Code.

FACTS

According to the information submitted and representations within, X was incorporated under the laws of State on Date 1. X elected to be treated as an S corporation on Date 2. On Date 3, all the shares of X were transferred to Y. As part of this transaction, Y elected to be treated as an S corporation and made an election to treat X as a Qualified Subchapter S Subsidiary (QSub), effective Date 3. X represents that this transaction was a mere change in identity and qualified as a reorganization under § 368(a)(1)(F). At the time of the reorganization, a shares of Y were owned by Trust1.

On Date 4, the a shares of Y, b shares each, were transferred to Trust2 and Trust3. On Date 5, Y was merged into X and the Y shares were replaced with X shares; thus X was the continuing corporation. X represents that this transaction was a mere change in identity and therefore qualified as a reorganization under § 368(a)(1)(F). X succeeded to Y's prior S corporation status.

A timely election to treat Trust2 and Trust3 each as an Electing Small Business Trust (ESBT) was not made, causing an inadvertent termination of X's S corporation status effective Date 4.

X represents that Trust2 and Trust3 have at all times met the requirements of an ESBT except that the trustees of Trust2 and Trust3 did not make timely ESBT elections under §1361(e)(3). In addition, X represents that X and its shareholders have treated X as an S corporation at all relevant times, and that Trust2 and Trust3 have each been treated as an ESBT since Date 4.

X represents that the failure to file ESBT elections for Trust2 and Trust 3 was inadvertent and was not motivated by tax avoidance or retroactive tax planning. Further, X represents that X and its shareholders agree to make any adjustments (consistent with the treatment of X as an S corporation) that may be required by the Secretary.

LAW AND ANALYSIS

Section 1361(a)(1) provides that the term “S corporation” means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for such year.

Section 1361(b)(1) defines a “small business corporation” as a domestic corporation which is not an ineligible corporation and which does not (A) have more than 100 shareholders, (B) have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual, (C) have a nonresident alien as a shareholder, and (D) have more than 1 class of stock.

Section 1361(c)(2)(A)(v) provides that, for purposes of § 1361(b)(1)(B), an ESBT may be an S corporation shareholder.

Section 1361(e)(1)(A) provides that an ESBT means any trust if (i) such trust does not have as a beneficiary any person other than (I) an individual, (II) an estate, (III) an organization described in § 170(c)(2), (3), (4), or (5), or (IV) an organization described in § 170(c)(1) which holds a contingent interest in such trust and is not a potential current beneficiary, (ii) no interest in such trust was acquired by purchase, and (iii) an election under § 1361(e) applies to such trust.

Section 1361(e)(1)(B) provides that an ESBT does not include (i) any qualified subchapter S trust (as defined in § 1361(d)(3)) if an election under § 1361(d)(2) applies to any corporation the stock of which is held by such trust, (ii) any trust exempt from tax under subtitle A, and (iii) any charitable remainder annuity trust or charitable remainder unitrust (as defined in § 664(d)).

Section 1361(e)(3) provides that an election under § 1361(e) shall be made by the trustee. Any such election shall apply to the taxable year of the trust for which made and all subsequent taxable years of such trust unless revoked with the consent of the Secretary.

Section 1.1361-1(m)(2)(i) of the Income Tax Regulations provides that the trustee of an ESBT must make the ESBT election by signing and filing, with the service center where the S corporation files its income tax return, a statement that meets the requirements of

§ 1.1361-1(m)(2)(ii).

Section 1.1361-1(m)(2)(iii) provides that the trustee of an ESBT must file the ESBT election within the time requirements prescribed in § 1.1361-1(j)(6)(iii) for filing a QSST election (generally within the 16-day-and-2-month period beginning on the day that the stock is transferred to the trust).

Section 1362(d)(2) provides that (A) an election under subsection (a) shall be terminated whenever (at any time on or after the 1st day of the 1st taxable year for which the corporation is an S corporation) such corporation ceases to be a small business corporation; and (B) any termination under this paragraph shall be effective on and after the date of cessation.

Section 1362(f) provides, in relevant part, that if (1) an election under § 1362(a) by any corporation was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b); (2) the Secretary determines that the circumstances resulting in such ineffectiveness or termination were inadvertent; (3) no later than a reasonable period of time after discovery of the circumstances resulting in such ineffectiveness or termination, steps were taken so that the corporation for which the termination occurred is a small business corporation; and (4) the corporation for which the termination occurred, and each person who was a shareholder in such corporation at any time during the period specified pursuant to § 1362(f), agrees to make the adjustments (consistent with the treatment of such corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness or termination, such corporation shall be treated as an S corporation during the period specified by the Secretary.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that X's S election terminated on Date 4 because of the failure to timely file an ESBT elections for Trust2 and Trust3. We further conclude that the termination of X's S election was inadvertent within the meaning of § 1362(f). Therefore, X will be treated as an S corporation effective Date 4 and thereafter, provided X's S corporation election is otherwise valid and not otherwise terminated under § 1362(d).

This ruling is contingent on the trustees of Trust2 and Trust3 filing with the appropriate service center, within 120 days from the date of this letter, elections to treat Trust2 and Trust3 as an ESBT effective Date 4. A copy of this letter should be attached to the ESBT elections.

Except as specifically ruled upon above, we express or imply no opinion concerning the

federal tax consequences of the facts of this case under any other provision of the Code. Specifically, we express or imply no opinion regarding X's eligibility to be an S corporation, or whether Trust2 and Trust3 otherwise qualify as valid ESBTs.

This ruling is directed only to the taxpayer who requested it. According to § 6110(k)(3), this ruling may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, we are sending a copy of this letter to your authorized representatives.

Sincerely,

Laura C. Fields

Laura C. Fields
Senior Technician Reviewer, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy of this letter for section 6110 purposes